

Post Viet Series Upheld, But U.S. Wins 2d Delay

Arguments On Security Set Today

By Sanford J. Ungar
Washington Post Staff Writer

A federal appeals court yesterday extended for another 24 hours its temporary ban on publication of a series of articles in The Washington Post based on a secret Pentagon study on the origins of the war in Vietnam.

Acting on the government's appeal after a lower court ruled for the second time that the newspaper was free to publish the series, the U.S. Court of Appeals for the District of Columbia voted to hear the Post case in a full-court session at 2 p.m. today.

The appellate court order against continuation of the Post series runs out at 5 p.m.

Today's hearing, like another one scheduled before the Second U. S. Circuit Court of Appeals in New York involving a similar series in The New York Times, will focus on the government's contention that the articles are dangerous to national security.

The Post has published two installments and the Times three, all based in a 47-volume document entitled "History of U.S. Decision-Making Process on Vietnam Policy."

Washington's federal appel-

late court, referring the Post case to all nine of its judges rather than a standard three-judge panel, acted at 6:50 p.m. to extend a ban originally imposed during a midnight session last Friday. The directive was signed "By the Court" and carried no individual judges' names.

Two hours and 20 minutes earlier, U.S. District Court Judge Gerhard A. Gesell declared that the Justice Department had failed to prove its contention that the Post series might endanger the nation's defense interests.

"The public interest makes an instant plea for publication," Gesell said, refusing to stay his decision even for 20 minutes to facilitate the government's appeal.

He ruled at the end of a day-long hearing, much of it held in secret at the government's request.

Rejecting the government arguments developed during the hearing through the testimony of officials from the Departments of State and Defense, Gesell said:

"There is no proof that there will be a definite break in diplomatic relations (as a result of the articles), that there will be an armed attack on the United States, that there will be an armed attack on an ally, that there will be a war, that there will be a compromise of military or defense plans, a compromise of intelligence operations, or a compromise of scientific and technological materials."

Once before, when the government initially filed suit last Friday night, Gesell refused to issue an injunction against The Post, citing "a raw issue of freedom of the press."

The judge reiterated that

theme again yesterday in a 12-minute oral ruling from the bench.

"The First Amendment in this case prohibits a prior restraint on publication," he said. "There is not here a showing of immediate grave threat to the national security... the First Amendment remains supreme."

Gesell's new hearing yesterday was held at the order of the Court of Appeals, which ruled 2-1 at 1:20 a.m. Saturday that the government should have a full opportunity to prove its allegations against The Post.

Deputy Assistant Attorney General Kevin T. Maroney, of the Justice Department's Internal Security Division, argued in court that the judge should accept the Pentagon's classification of the Vietnam study as "Top Secret—Sensitive."

"A Few More Days"

He urged the judge to give the government at least "a few more days" to present still further testimony showing the damage that might be done by the series of articles.

Maroney also stressed that a review of the 47-volume study is currently being conducted "for the purpose of determining which parts of the documents should be declassified."

Attorney William B. Glendon, representing the Post, cited the earlier decision in The New York Times case by U.S. District Court Judge Murray I. Garfien in New York that articles drawn from the secret study do not prejudice the nation's security.

"Eight or nine days have passed" since The Times published its first article, Glendon pointed out, "and nothing has happened."

Deriding the government's

documents, he complained that "these gentlemen—as all of us are—are inured in their own particular world. They are unaware of the larger issues."

Gesell also heard from Rep. Bob Eckhart (D-Tex.), speaking for himself and 26 other congressmen who intervened as amici curiae in the case on behalf of their own "right to know." Eckhart said government should not be permitted to pick and choose amongst information what they will censor."

After the hearing convened at 8 a.m. yesterday, Gesell heard testimony in open session from two government witnesses who sought to explain the "Top Secret—Sensitive" classification on the study and all of its parts, including public speeches, newspaper clippings and other material in the public domain. The Justice Department said it had been unable to locate the person who originally put that label on the document.

But George MacClain, a Defense Department specialist on classification and declassification of sensitive material, said the entire study had received a single classification, thus elevating some of the public material to the level of "top secret."

This procedure, he said, is known as "derivative classification."

Dennis J. Doolin, Deputy Assistant Secretary of Defense for International Security Affairs, said he had only recently reviewed the study and determined that it should remain strictly classified.

His review was conducted after Sen. J. W. Fulbright (D-Ark.), chairman of the Senate Foreign Relations Committee, renewed a request to Defense Secretary Melvin Laird for a full copy of the study.

When The Post's attorneys requested to see the memo Doolin had written to Laird urging that Fulbright not receive the study, the Defense Department official refused.

It too, he explained, is classified "Top Secret—Sensitive" because it contains quotations

STAT

STAT

continued

MORI/CDF